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July 16, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W. Suite TW-A325
Washington, D.C. 20554

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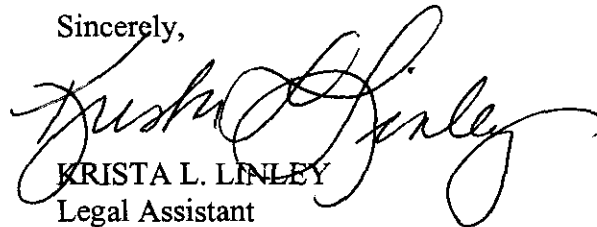
RE: In the Matter of Review of Section 251 Unbundling Obligations of Incumbent
Local Exchange Carriers, et al. CC Docket No. 01-338, 96-98, 98-147

Dear Ms. Salas:

Enclosed for filing is the signed original Reply Comments of the Washington Utilities
and Transportation Commission in the above-referenced dockets, which was filed electronically
July 15, 2002.

Thank you for your assistance.

Sincerely,


KRISTA L. LINLEY
Legal Assistant

:kl
Enclosure

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**Before the
Federal Communications Commission
Washington D.C. 20554**

In the Matter of Review of the Section 251)	CC Docket No. 01-338
Unbundling Obligations of Incumbent Local)	
Exchange Carriers)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 98-147.
)	
Deployment of Wireline Services Offering)	
Advanced Telecommunications)	
Capability,)	

**REPLY COMMENTS OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250
(360) 664-1150
July 16, 2002

I. SUMMARY

The Washington Utilities and Transportation Commission (“WUTC”) welcomes this opportunity to submit reply comments in the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking in the proceeding captioned: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

The WUTC urges the Commission to:

- 1. Convene a § 410(b) Federal-State Joint Conference to facilitate, inform, and coordinate its implementation of the three-year UNE review to meet the requirements of [§] 251, and**
- 2. Ensure that States retain the authority to impose additional unbundling obligations upon incumbent LECs,**

as recommended in the National Association of Regulatory Utility Commissioners’ (“NARUC”) initial comments.

II. NAME AND IDENTITY OF COMMENTER

1. The name and address of the commenter:

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

2. All correspondence, communication, and pleadings in this proceeding

should be sent to:

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

3. The WUTC is a state commission having sole jurisdiction to regulate the retail rates, services and practices of investor-owned telecommunications companies within the state of Washington. *Title 80 Revised Code of Washington ("RCW")*. The WUTC has express authority to act:

...as petitioner, intervenor, or otherwise to initiate and /or participate in proceedings before federal administrative agencies in which there is at issue the authority, rates, or practices for transportation or utility services affecting the interests of the state of Washington, its businesses and general public, and to do all things necessary in its opinion to present to such federal administrative agencies all facts bearing upon such issues....

RCW 80.01.075.

III. INTRODUCTION AND BACKGROUND

The Washington Utilities and Transportation Commission respectfully submits these comments in reply to April 5, 2002, pleadings filed in response to the Notice of Proposed

Rulemaking ("Notice" or "Triennial Review") issued by the Federal Communications Commission ("Commission") in the above-captioned proceedings.¹ Because of the critical impact action in this proceeding will have on existing State commission policy initiatives, we feel compelled to file and specifically endorse NARUC's April 5, 2002, comments.

IV. COMMENTS OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

The Washington Utilities and Transportation Commission endorses the NARUC positions.² The WUTC respectfully requests that the Commission convene a § 410(b) Federal-State Joint Conference to facilitate, inform, and coordinate its implementation of the three-year UNE review. The WUTC also requests that the Commission ensure that States retain the authority to impose additional unbundling "obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251."³

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) ("Notice").

² *Initial Comments of the National Association of Regulatory Utility Commissioners*, CC Docket Nos. 01-338, 96-98, and 98-147, Filed April 5, 2002.

³ See, *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) ("Remand Order"). See also NARUC's February 2002 *Resolution Concerning the States' Ability to Add to the National Minimum List of Network Elements* ("[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC's national minimum.")

Specifically, the WUTC endorses the following NARUC positions:

(1) A Joint Conference is in the Public Interest

State regulators play critical roles in implementing the statutory UNE regime, and in participating in the data-intensive and State-specific nature of the three-year review. At a minimum, the FCC should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory "necessary" and "impair" standards.

(2) State Authority To Add New UNEs/Obligations Should be Retained

We agree with the FCC's findings that § 251(d)(3) of the 1996 Act "grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251."⁴ We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support this approach.

(3) States should Determine Impact of Federal Minimum List

As recognized implicitly in the UNE Remand Order's specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that

⁴ See, footnote 3.

is appropriate for local market conditions. Consequently, the FCC should defer to the States determinations of whether unbundling requirements in any State should exceed or duplicate the existing or new federal minimums. Assuming any new federal minimum removes one or more UNEs from the national list, or restricts availability of any UNE, States should retain authority to make the final determination. Restrictions or limitations on availability of a UNE should not apply in any State that determines: (1) a competitor's access to the UNE is "necessary"; (2) lack of access to the UNE "would impair" that competitor's ability to offer services; or (3) the UNE is required as a matter of State rule or statute.⁵

(4) Federal Action should support universal availability of UNE-P

The FCC "should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another." Specifically, the FCC should assure that its implementation of § 251 "does not favor one method of entry, at the expense of other methods of entry."⁶

⁵ See, *NARUC December Letter* at 2 ("[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.")

⁶ See, *NARUC November 13, 2001 Resolution on the UNE-P Platform*. ("[A]ny party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.")

V. CONCLUSIONS

The Commission should convene a § 410(b) Federal-State Joint Conference to facilitate, inform, and coordinate its implementation of the three-year UNE review. The Commission should also assure that States retain the authority to impose unbundling obligations upon incumbent LECs in addition to those imposed by the national list, provided that the requirements of [§] 251 are met.

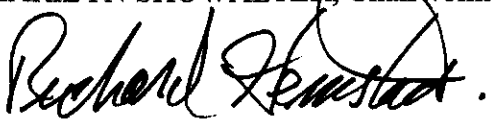
We appreciate your consideration of these comments.

DATED at Olympia, Washington, this sixteenth day of July 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARILYN SHOWALTER, Chairwoman



RICHARD HEMSTAD, Commissioner



PATRICK J. OSHIE, Commissioner